

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CONSTITUTION STATE CHALLENGE, :	:	
INC., and NORTHEASTERN OPEN :	:	
INVITATIONAL, INC. :	:	
Plaintiffs :	:	
	:	
v. :	:	Civil Action No. 3:00 CV 650 (CFD)
	:	
JOHN NYEMCHEK and CATHI :	:	
NYEMCHEK, :	:	
Defendants :	:	

RULING ON MOTIONS FOR PRELIMINARY INJUNCTION

The plaintiffs, Constitution State Challenge, Inc. (“CSC”) and Northeastern Open Invitational, Inc. (“NEO”), have filed this action against the defendants, John and Cathi Nyemchek, alleging copyright infringement in violation of 17 U.S.C. § 501, trademark infringement in violation of the Lanham Act § 43(a), 15 U.S.C. § 1125(a), and other state claims. The plaintiffs seek declaratory and injunctive relief, damages, and costs and attorney’s fees.

The plaintiffs have filed a motion for a preliminary injunction [Document #11] and an emergency motion for a preliminary injunction [Document #24]. Each motion is DENIED for the following reasons.

I. Background

Plaintiff CSC is a Connecticut corporation that hosts a ballroom dance competition annually in September. Plaintiff NEO is also a Connecticut corporation that hosts a ballroom dance competition annually in January. Each organization derives its principal revenue from these competitions, which have been held for several years, and which are sanctioned by the National Dance Council of America (“NDCA”) trade organization. Ronald and Lenora Cote are major

shareholders in CSC and NEO, and are directors and officers of the corporations. The defendants, John and Cathi Nyemchek, are also major shareholders, directors, and officers of CSC. In addition, Cathi Nyemchek is a major shareholder, director, and officer of NEO.¹ To summarize briefly, a falling out occurred between the Cotes and the Nyemcheks, which has resulted in this lawsuit and a related state court action.

The Cotes and the Nyemcheks attempted to reach an agreement to dissolve CSC and NEO in December 1999. Their attempt to reach an agreement failed and the defendants brought an action in Connecticut Superior Court to dissolve both corporations.² The plaintiff corporations, at the apparent direction of the Cotes, subsequently filed this action in federal court against the defendants, claiming breach of fiduciary duty, violation of the Connecticut Unfair Trade Practices Act (“CUTPA”), Conn. Gen. Stat. § 42-110b, unfair competition, tortious interference, copyright infringement, misrepresentations and trademark infringement in violation of the Lanham Act, and trade secret violations.³ These claims generally arise from allegations that the defendants continue to work in the dance community, without the Cotes, by affiliating with, competing in, and judging other dance competitions. The defendants also, on at least one occasion, hosted their own competing dance competition.

The plaintiffs also filed a motion for a preliminary injunction [Document #11], which the

¹It is unclear whether John Nyemchek is a shareholder, director, or officer of NEO.

²A trial of the state case was scheduled to begin on December 20, 2000. It is unclear what, if any, result was reached in that case.

³The Court has jurisdiction of this case because it arises under federal copyright and trademark laws, and on the basis of the Court’s diversity jurisdiction. See 28 U.S.C. §§ 1331, 1332.

Court scheduled for a hearing on September 11, 2000. Prior to the hearing, the plaintiffs filed a second, emergency motion for a preliminary injunction [Document #24].

A. Emergency Motion for a Preliminary Injunction

The plaintiffs filed their emergency motion for a preliminary injunction to prevent the Nyemcheks from interfering with a CSC dance competition scheduled for September 22-24, 2000. The defendants objected to the emergency motion on the ground that it was moot. They argued it was moot because they had agreed, at least until October 18, 2000, to all of the plaintiffs' legally cognizable requests for relief. See infra.

At the hearing on September 11, 2000, the Court addressed only the issues raised in the emergency motion for a preliminary injunction in order to prevent any interference with CSC's competition on September 22-24, 2000. The plaintiffs requested eight forms of injunctive relief in order to ensure the success of the CSC competition. They asked the Court to order the defendants to: (1) not disparage the CSC competition; (2) not affiliate with any other dance competitions held in the northeastern region of the United States; (3) forward all inquiries and other communications concerning the CSC competition directly to CSC; (4) not interfere with the CSC competition; (5) not attend the CSC competition; (6) turn over to CSC various mailing lists, computer disks and software, and other claimed corporate property; (7) not hold any competing events or otherwise breach their fiduciary duties to CSC; and (8) sign a joint announcement to the dance community—a postcard—indicating that the CSC competition would be held as usual and that the parties would work together to ensure its success now and in the future.⁴

⁴The plaintiffs also requested that the Court enjoin the defendants from judging any dance competitions while an injunction was in effect. The Court declined to address that issue at the September 11, 2000 hearing, however, because it did not concern the CSC competition scheduled

The defendants agreed on the record to each of the plaintiffs' first seven requests for injunctive relief, at least until October 18, 2000. Counsel for the plaintiffs acknowledged the parties' apparent agreement on these points. See Tr. Sept. 11, 2000, at 42. The defendants objected to the plaintiffs' eighth request for relief, however, arguing that the Court did not have the authority to order them to add their names to a postcard endorsing and advertising the CSC competition.

The Court concluded that the plaintiffs' first seven requests for relief were satisfied, but that there were substantial questions of law concerning its authority to order the defendants to sign the CSC postcard.⁵ The Court therefore declined to order the defendants to sign the postcard.⁶ In addition, the Court warned the parties that it expected full compliance with their agreement on the other seven points of relief. The Court then continued the hearing until after the completion of the CSC competition on September 24, 2000.⁷

B. Original Motion for a Preliminary Injunction

Following the September CSC competition, the Court held a hearing on December 12 and

for September 22-24, 2000. The defendants were not scheduled to judge any competitions prior to the CSC competition.

⁵The Court expressed doubt as to whether it could order the defendants to endorse the CSC competition and otherwise indicate that it was "business was usual," when that clearly was not the case.

⁶The Court also declined to prohibit the plaintiffs from mailing the postcard with the defendants' names on it, but warned the plaintiffs that they would do so at their own peril.

⁷At the conclusion of the September 11, 2000 hearing, while still on the record, the defendants turned over to the Cotes additional computer disks, message slips and emails received by the defendants, which were intended as correspondence to the plaintiffs, and various advertisements for other dance competitions addressed to the plaintiffs.

27, 2000 to address the plaintiffs' original motion for a preliminary injunction. The parties presented evidence at the hearing, and also submitted post-hearing memoranda.

Like the emergency motion for a preliminary injunction, the plaintiffs' original motion for a preliminary injunction asked the Court to enjoin the defendants from: (1) competing with CSC and NEO or otherwise being involved in any other dance competition; (2) taking any unilateral action on behalf of CSC and NEO, presenting themselves as agents or representatives of CSC and NEO, or refusing to turn over to Ronald Cote all mail and other communications concerning CSC and NEO; (3) misrepresenting or defaming CSC and NEO, interfering with their contracts, or otherwise harming the corporations; (4) withholding CSC and NEO trade secrets, including client lists, from Ronald Cote; (5) infringing, or contributing to or inducing infringement of, copyrighted material and trademarks of CSC and NEO; and (6) misappropriating, using, destroying, or wasting the assets of CSC and NEO. In addition, the plaintiffs asked the Court to preclude the defendants "from participating as a judge [sic] at any dance competition." Pls.' Post-Trial Mem. at 3.

The plaintiffs also requested sanctions for failure of the defendants to comply with the parties' September 11, 2000 agreement. Specifically, they claimed that the defendants had refused to turn over all corporate mailing lists, computer software, and logbooks in their possession, and had made negative or disparaging remarks concerning CSC or NEO.

As in their response to the plaintiffs' emergency motion for a preliminary injunction, the defendants objected to the plaintiffs' original preliminary injunction motion and the request for sanctions on the ground that they had agreed the plaintiffs' requests for relief, including turning over to the plaintiffs all corporate property in their possession, with the exception of the plaintiffs'

request that they be precluded from judging dance competitions. They objected to the so-called judging issue on the ground that it seeks a mandatory injunction and thus is designed not to maintain a status quo but to cripple the defendants' economic livelihood.⁸ They also denied making negative or disparaging remarks concerning CSC or NEO, and indicated that their planning of other dance competitions would be dependent on the outcome of this litigation.

II. Discussion

A. Preliminary Injunction Standard

“In order to obtain a preliminary injunction, a party must demonstrate: (1) that it is subject to irreparable harm; and (2) either (a) that it will likely succeed on the merits or (b) that there are sufficiently serious questions going to the merits of the case to make them a fair ground for litigation, and that a balancing of hardships tips ‘decidedly’ in favor of the moving party.”

Genessee Brewing Co. v. Stroh Brewing Co., 124 F.3d 137, 142 (2d Cir. 1997); see also Fundamental Too, Ltd., v. Gemmy Indus. Corp., 111 F.3d 993, 998-99 (2d Cir. 1997); L. & J.G. Stickley, Inc. v. Canal Dover Furniture Co., 79 F.3d 258, 261-62 (2d Cir. 1996); Tough Traveler, Ltd. v. Outbound Prods., 60 F.3d 964, 967 (2d Cir. 1996). However, the Second Circuit has cautioned that preliminary injunctive relief “is an ‘extraordinary and drastic remedy which should not be routinely granted.’ ” Buffalo Forge Co. v. Ampco-Pittsburgh Corp., 638 F.2d 568, 569 (2d Cir. 1981) (quoting Medical Society of New York v. Toia, 560 F.2d 535, 538 (2d Cir.

⁸While a typical preliminary injunction is “prohibitory” and generally seeks only to maintain the status quo pending a trial on the merits, a “mandatory” injunction alters the status quo by commanding some positive act. See Tom Doherty Assocs. v. Saban Entm’t, Inc., 60 F.3d 27, 33 (2d Cir. 1995). A mandatory injunction may issue only when a moving party makes a “clear showing” that it is entitled to preliminary injunctive relief, or establishes that “extreme or very serious damage” will result from a denial of a preliminary injunction, which is a higher standard than is required for a prohibitory injunction. Id.

1977)).

The plaintiffs in this case contend that the defendants' actions have caused and continue to cause them irreparable harm, and that they are likely to succeed on the merits of their claims. In response, the defendants contend that the plaintiffs' have failed to show actual or imminent irreparable harm because, as with the emergency motion for a preliminary injunction, the relief sought by the plaintiffs in their original preliminary injunction motion either has been agreed to or is unavailable as a matter of law.

B. Irreparable Harm

A preliminary injunction must be denied where the party seeking such relief fails to demonstrate a likelihood that it will suffer irreparable harm if the Court does not grant the relief. See Borey v. National Union Fire Ins. Co., 934 F.2d 30, 34 (2d Cir. 1991) ("We have noted more than once that perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered."). In order to demonstrate irreparable harm sufficient to satisfy the standard for preliminary injunctive relief, the plaintiff must demonstrate more than the risk of mere monetary loss. See Tucker Anthony Realty Corp. v. Schlesinger, 888 F.2d 969, 975 (2d Cir. 1989) ("A monetary loss will not suffice unless the movant provides evidence of damage that cannot be rectified by financial compensation."). "[W]hen a party can be fully compensated for financial loss by a money judgment, there is simply no compelling reason why the extraordinary equitable remedy of a preliminary injunction should be granted." Borey, 934 F.2d at 34.

Further, in trademark and copyright disputes, a presumption of irreparable harm arises

once a plaintiff establishes a likelihood of success on a claim. See Tom Doherty Assocs. v. Saban Entm't, Inc., 60 F.3d 27, 39 (2d Cir. 1995).

C. Plaintiffs' Claims of Irreparable Harm

The plaintiffs in this case contend that the defendants have “systematically attacked and harmed the goodwill and reputation that the Plaintiffs have earned with [their] business partners,” Mem. Supp. Mot. Prelim. Inj. at 7, which they claim has caused and will continue to cause them actual and imminent harm for which damages would be inadequate. See Bristol Tech., Inc. v. Microsoft Corp., 42 F. Supp. 2d 153, 162 (D. Conn. 1998). Specifically, they contend that the defendants have damaged and will continue to damage their goodwill and reputation with potential dance contestants, dance judges, the NDCA trade organization, and various dance competition sponsors by engaging in “an intentional and planned pattern of destructive behavior.” Mem. Supp. Mot. Prelim. Inj. at 12. This pattern of behavior, they contend, includes refusing to promote CSC and NEO competitions, representing that they are the successors in interest to the “now-defunct” CSC and NEO, competing directly with CSC and NEO competitions, and, they had argued, by planning a competition for January or February 2001 that would compete with NEO’s competition in January 2001.⁹

As a result, the plaintiffs contend, the defendants’ actions caused: (1) cancellation of NEO’s January 2000 competition; (2) poor attendance at CSC’s September 2000 competition; (3) temporary loss of CSC’s and NEO’s NDCA accreditation; (4) loss of CSC and NEO attendance, revenue, sponsorship, and advertising; and (5) loss of the Westin Hotel in Stamford as a venue for the annual CSC competition. The plaintiffs also contend that the defendants’ actions have caused

⁹The defendants did not host their own competition in January 2001.

general harm to their reputations and prestige within the dance community.

At the December 2000 hearing, the plaintiffs asserted two arguments in support of their motion for a preliminary injunction and their request for sanctions. First, the plaintiffs argued that the defendants had violated the parties' September 11, 2000 agreement. They argued specifically that the defendants had failed to turn over to the plaintiffs the following corporate property: (1) a "dBase computer operating system"¹⁰; (2) computer software used to generate client lists; and (3) corporate logbooks. As a result, they claimed they had been unable to use these items in support of the September 2000 CSC competition, which caused continuing harm to their goodwill and reputations. Second, the plaintiffs argued that the defendants should be precluded from judging dance competitions, which would cause them future harm:

It is our belief, our fear, if you will, that people who might at sometime be competing in a competition that the Nyemcheks are judging, because of the notoriety this lawsuit has in the dance community, might be reluctant to participate in the Constitution State Challenge or NEO competitions for fear of upsetting the Nyemcheks. . . . [T]he perception is amongst the dance community that judges do exhibit biases towards people that they are friendly with or sympathetic with, and will judge those that they are not friendly with or sympathetic with more harshly. . . . [W]hether [those perceptions] are warranted or not, it's the perception itself and not the reality of what the perception states that causes the potential injury and potential harm to [the plaintiffs].

Tr. Dec. 12, 2000, at 92, 95.

D. Plaintiffs' Evidence of Irreparable Harm

In support of these claims, the plaintiffs presented the testimony of three witnesses at the December 2000 hearing. Krista Cote, an employee of CSC and NEO, testified that the plaintiffs

¹⁰A "dBase computer operating system" is a database application program, which gives a user the ability to maintain interrelated computer files. Interrelated files are used to track information like client names and addresses, and to recall that information for various purposes.

did not receive from the defendants all of the computer hardware and software that they had expected to receive from the defendants. They did not receive from the defendants the corporations' dBase operating system or a complete set of the software used to generate client lists. As a result, Ms. Cote testified, the plaintiffs had to form their own operating system and databases, which was time-consuming and less effective than the equipment they had expected to receive from the defendants.

Ronald Cote also testified on behalf of the plaintiffs. He testified that the plaintiffs purchased the computer equipment at issue, including the dBase operating system and software used to generate client lists. He also testified that the defendants had failed to turn over to the plaintiffs all of the corporate logbooks that he believed existed, and that he believed the defendants possessed. In addition, Mr. Cote testified about the decline in attendance and revenue of the September 2000 CSC competition. He specifically discussed "perceptions in the dance community" about the bias of judges, including the Nyemcheks, who judge many dance events each year. He attributed the poor attendance at the CSC competition in part to contestants' fears that by dancing at the CSC competition they might upset the Nyemcheks and thus be judged more harshly by them at other competitions.

Esther Don, a professional dancer and dance teacher, and a former business partner of the defendants, also testified on behalf of the plaintiffs. Like Mr. Cote, she testified concerning perceptions in the dance community about the bias of judges. She hypothesized, for example, that a dance teacher might not enter a CSC or NEO competition with his or her students for fear of upsetting the Nyemcheks. The teacher might fear, correctly or not, that upsetting the Nyemcheks could result in lower scores for their students at later competitions judged by the Nyemcheks,

which might ultimately result in a loss of students for the teacher.

III. Findings of Fact¹¹

Having considered the parties' arguments and evidence, the Court finds by a preponderance of the evidence the following facts concerning the plaintiffs' request for injunctive relief:

1. Plaintiff CSC is a Connecticut corporation that hosts a ballroom dance competition annually in September;

2. Plaintiff NEO is a Connecticut corporation that hosts a ballroom dance competition annually in January;

3. Each organization derives its principal revenue from these competitions, which have been held for several years, and which are sanctioned by the National Dance Council of America ("NDCA") trade organization;

4. Ronald and Lenora Cote are major shareholders in CSC and NEO, and are directors and officers of the corporations;

5. The defendants, John and Cathi Nyemchek, are also major shareholders, directors, and officers of CSC;

6. Cathi Nyemchek is a major shareholder, director, and officer of NEO;

7. A falling out occurred between the Cotes and the Nyemcheks, which has resulted in this lawsuit and a related state court action to dissolve both plaintiff corporations;

8. At a hearing on September 11, 2000, the defendants agreed to the plaintiffs' first

¹¹A district court's findings of fact and conclusions of law in a preliminary injunction ruling are not binding at a trial on the merits. See University of Tex. v. Camenisch, 451 U.S. 390, 395 (1981).

seven requests for relief set forth in their emergency motion for a preliminary injunction, at least until October 18, 2000; the defendants objected only to the plaintiffs' eighth request for relief, which would have required them to add their names to a postcard endorsing and advertising the September CSC competition;

9. The defendants have fully complied with the parties' September 11, 2000 agreement;

10. The defendants have not hosted their own dance competition since January 1999;

11. There is no evidence that the defendants are planning other dance competitions, or otherwise intending to compete with the plaintiffs, at least until the resolution of this litigation;

12. The plaintiffs did not send a postcard with the defendants' names on it to the dance community endorsing or advertising the September 2000 CSC competition;

13. The defendants did not attend or otherwise interfere with the September 2000 CSC competition or the January 2001 NEO competition;

14. The defendants are not making disparaging or derogatory remarks concerning the plaintiffs;

15. The defendants are not withholding the plaintiffs' trade secrets, or infringing or contributing to the infringement of the plaintiffs' copyrighted material and trademarks, or misappropriating, using, destroying, or wasting the plaintiffs' assets;

16. The defendants have turned over to the plaintiffs all corporate property in their possession, including computer software used to generate client lists, corporate logbooks, and other client correspondence and information;

17. The defendants have made available to the plaintiffs for copying the dBase

operating system on their computer;

18. The defendants, like the Cotes, lack the computer expertise to copy the dBase operating system for the plaintiffs;

19. The defendants have recently provided the plaintiffs with a new copy of the dBase computer operating system, which the defendants recently purchased from the system's creator;

20. The defendants, like the Cotes, have judged many dance competitions throughout their careers, including competitions other than the plaintiffs' bi-annual competitions;

21. Judging is a substantial source of income for the defendants;

22. An order prohibiting the defendants from judging dance competitions would cause them significant harm;

23. The "dance community" as used by the plaintiffs in support of their request that the defendants be precluded from judging is imprecisely defined;

24. The extent and accuracy of "perceptions in the dance community" concerning the bias of judges is unclear; and

25. The defendants are not actually biased in their judging, and are not likely to be biased in their judging in the future.

IV. Conclusions of Law

A. Corporate Property

As indicated by the Court's findings of fact, the defendants have turned over to the plaintiffs all corporate property in their possession. They have also complied fully with the parties' September 11, 2000 agreement. The plaintiffs' request for preliminary injunctive relief is therefore denied as moot to the extent they seek such relief.

B. Judging

In addition, as indicated, the Court concludes that the “perceptions in the dance community” concerning the bias of judges are imprecisely defined and the evidence presented concerning such perceptions lacks sufficient indicia of reliability. Who and what encompass “the dance community” is unclear, as is the extent of the relevant perceptions within such a community. The plaintiffs have also offered insufficient evidence that they have suffered, or are likely to suffer, actual or imminent harm as result of the Nyemcheks’ judging. The plaintiffs have presented no evidence that the defendants, acting as judges, have ever penalized dance contestants for competing in other competitions. Nor have the plaintiffs produced sufficient evidence from which to infer that the defendants are likely to penalize dance contestants who compete in future CSC and NEO competitions. The Court concludes that they are not likely to do so.

C. Proportionality of Injunctive Relief Requested

Even if the plaintiffs could demonstrate that they are likely to be irreparably harmed by the defendants judging dance competitions, the relief requested by the plaintiffs is out of proportion to that harm. The plaintiffs have requested that the Court prohibit the defendants from judging competitions anywhere in the continental United States or, alternatively, within an area north of the Mason-Dixon line and east of the Mississippi River. However, the plaintiffs have not presented evidence of the extent of harm that the defendants’ judging would cause them, as opposed to harm caused by other variable factors. Nor have they presented other evidence to support the proposed, broad geographical constraints on the defendants’ judging. The Court therefore concludes that the plaintiffs’ request to preclude the defendants from judging is not narrowly tailored to the irreparable harm alleged by the plaintiffs; the plaintiffs’ request is arbitrary

and overly broad. See Transamerica Rental Fin. Corp. v. The Rental Experts, 790 F. Supp. 378, 382 (D. Conn. 1992) (“In fashioning an injunction, the court should make the relief as narrow as required to attain the desired result.”); see also California v. American Stores Co., 872 F.2d 837, 845 (9th Cir. 1989), rev’d on other grounds, 495 U.S. 271 (1990); Lynch v. Dukakis, 719 F.2d 504, 514 (1st Cir. 1983), abrogated by Suter v. Artist M., 503 U.S. 347 (1992).

Moreover, as indicated, the Nyemcheks, like the Cotes, have judged many competitions throughout their careers. Cathi Nyemchek testified at the hearing that judging is a substantial source of income for them, and an order prohibiting them from judging dance competitions would cause them significant harm. Based on this evidence, the Court concludes that the plaintiffs’ request to preclude the defendants from judging, which the plaintiffs have requested as a temporary measure to provide CSC and NEO with “breathing room” so they can rebuild their organizations, would be disproportionate to the harm likely to be suffered by the defendants. The Court therefore declines to prohibit the defendants from judging dance competitions. See Hoxworth v. Blinder, Robinson & Co., 903 F.2d 186, 197-98 (3d Cir. 1990) (“[T]he district court should take into account . . . the possibility of harm to other interested persons from the grant or denial of the injunction. . . . Harm to a defendant is a [] factor to be considered, and a defendant . . . is harmed more than necessary by an injunction encumbering far more of its assets than are at stake in the underlying litigation.”); American Stores Co., 872 F.2d at 845 (“Preliminary injunctive relief . . . should be no more burdensome than necessary to preserve a plaintiff’s ability to obtain the complete relief to which it is entitled.”); Lynch, 719 F.2d at 514 (“[T]he scope of injunctive relief is dictated by the extent of the violation established and the relief afforded may not be more burdensome than necessary to redress the complaining parties.”).

D. Plaintiffs' Other Claims

The Court further concludes that the plaintiffs have failed to establish a pattern of harmful actions by the defendants sufficient to justify the plaintiffs' other requests for injunctive relief.

Mr. Cote testified that the defendants harmed CSC and NEO in the past by designing a program for their own January 1999 competition, the DanceSport International Games. He indicated that the defendants copied many aspects of the program previously designed for the January 1999 NEO competition. He also testified that the defendants' program indicated their January 1999 competition was the successor in interest to the CSC and NEO competitions, and that their competition had inherited CSC's and NEO's NDCA sanction. In addition, Mr. Cote testified, the defendants refused to send out marketing material for the January 1999 NEO competition, which they had in their possession, until the Cotes agreed to dissolve CSC and NEO.

Nevertheless, assuming that Mr. Cote's testimony is true, most of those actions occurred two to three years ago. Nor does it appear from the evidence presented that the defendants have repeated such actions. Notably, as indicated, there is no evidence that the defendants are planning other dance competitions, or otherwise intending to compete with the plaintiffs, at least until the resolution of this litigation. The defendants have also agreed, as indicated, to refrain from such conduct and to abide by the parties' September 11, 2000 agreement. Accordingly, despite any presumption of irreparable harm that may ordinarily arise in trademark and copyright disputes, these alleged wrongful actions by the defendants may be appropriately remedied with damages and thus are not sufficient to merit preliminary injunctive relief. See Borey, 934 F.2d at 34; see also Tom Doherty Assocs., 60 F.3d at 39-40.

Furthermore, as indicated, the Court concludes that the defendants have complied with the

parties' September 11, 2000 agreement. The Court credits the testimony of Mrs. Nyemchek that she has turned over to the plaintiffs all logbooks and other client information in the defendants' possession. The parties also agree that, since October 18, 2000, the defendants have made the dBase operating system on their computer available for the plaintiffs to copy, which would allow the plaintiffs to use the client information contained in the other computer software and the logbooks.¹² In addition, the defendants did not interfere with the September 2000 CSC competition or participate in any dance competitions in January or February 2001. The plaintiffs thus have failed to present sufficient evidence that the defendants have failed to turn over all corporate property in their possession or otherwise violated the parties' September 11, 2000 agreement.

Accordingly, even assuming that the relief sought by the plaintiffs is not mandatory in nature, and thus that they are not required to meet the heightened burden for a mandatory injunction, the Court declines to prohibit the defendants from judging dance competitions.¹³ The Court also denies the preliminary injunction motions as moot to the extent that they seek other requests for relief. The defendants have agreed to the plaintiffs' requests for relief, other than the judging issue, and thus a preliminary injunction is not needed to preserve the status quo. See The Rental Experts, 790 F. Supp. at 381 ("It is well established in this Circuit that the purpose of a preliminary injunction is to preserve the status quo between two parties."). This ruling is without

¹²At the hearing on December 27, 2000, the defendants also turned over to the plaintiffs a copy of the original dBase operating system in dispute, which they had recently purchased from the system's creator. Prior to this date, no efforts were made by either party to copy the dBase operating system from the defendants' computer because neither party had the computer expertise to do so.

¹³See supra note 8.

prejudice, however, to the plaintiffs renewing their request for preliminary injunctive relief based on any future conduct by the defendants that might alter the status quo.

V. Request for Sanctions

The plaintiffs' request for sanctions, which is based on the defendants' failure to comply with the parties' September 11, 2000 agreement, is also denied. As indicated, the Court concludes that the defendants have turned over to the plaintiffs all corporate property in their possession. This ruling is without prejudice, however, to the plaintiffs renewing their request for sanctions based on any future violations of that agreement.

VI. Conclusion

For the preceding reasons, the plaintiffs' motion for a preliminary injunction [Document #11] is DENIED. The plaintiffs' emergency motion for a preliminary injunction [Document #24] is DENIED on the same basis, and on the ground that it only concerns the September 2000 CSC competition and thus is moot.

SO ORDERED this 1st day of June 2001 at Hartford, Connecticut.

Christopher F. Droney
United States District Judge